

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15068 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJARAT

Versus

BINDESHWARISINGH N RAJPUT

Appearance:

1. Special Civil Application No. 15068 of 2003
MR PRADIP BHATE A.G.P. for Petitioner No. 1-2
MR NIKHIL D JOSHI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 25/08/2004

ORAL JUDGEMENT

1.0. The E.S.I.C. through the State of Gujarat has filed this petition challenging the judgment and award of the Labour Court, Ahmedabad dated 4th April, 2003 in Recovery Application No.376/87, whereby the Labour Court

has directed the petitioner State to pay an amount of Rs.1,23,094=00 towards overtime for the period between 2nd June, 1965 to 2nd June. 1986.

2.0. The short facts as they emerge from the record of the petition are that the respondent-workman was appointed as Class-IV employee on the post of watchman in the payscale of Rs.196-232/-. It is the case of the respondent-workman that since 4th June, 1965, he has been working as night watchman with the petitioner State. It is the case of the respondent-workman that though he had worked overtime, the petitioner State is not paying him overtime wages.

2.1. Mr. Bhate learned A.G.P. appearing for the petitioner State contended that since the respondent-workman is a Government servant and he is a permanent employee of the State Government, he will be governed by the Bombay Civil Services Rule, 1959 ["B.C.S.R." for short]. Mr. Bhate further contended that under Rule 17 of the B.C.S.R. the Government servant is not entitled for overtime.

2.2. Mr. Bhate submitted that though the aforesaid contentions were raised in para 2 of their reply at annexure-C before the Labour Court, the same were not taken into consideration while allowing the application.

2.3. Mr. Bhate further contended that though it was not established before the Labour Court that he had worked overtime, the Labour Court had directed to pay the aforesaid amount for the period between 1965 to 1986. Hence, it is this award which is now under challenge in this petition.

2.4. As against that Mr. Joshi learned advocate appearing for the respondent-workman contended that when the petitioners have themselves accepted the order of the Labour Court in other Recovery Application No.1657/80 and even in Recovery Application No.1821/85 and 5024/86, it is now not open for them to raise such contention in this petition. Mr. Joshi has contended that in case of Natwarlal Amratlal Shah v. Director, E.S.I.C. reported in 2001 (II) L.L.J. p.945, this Court had allowed the application filed under Section 33-C(2), which was dismissed on the ground of delay and laches. He submitted that in view of the aforesaid decision, the respondent-workman should be granted the benefit of overtime.

3.0. I have heard the learned advocate for the

respective parties and have perused the record. From the record, it is clear that the respondent-workman himself had made an application before the Labour Court claiming that he is working from 4th June, 1965 and he is a permanent employee of the State Government. However, if he is a government servant, then he is governed by the B.C.S.R. and he is not entitled for any overtime payment, in view of the provisions of Rule 17, which reads as under :-

"17. Unless in any case it be otherwise distinctly provided the whole time of a Government servant is at the disposal of Government and he may be employed in any manner required under by the proper authority, whether the services required of him are such as would ordinarily be remunerated from the Consolidated Fund of India or of a State, or from the revenues of a local fund.

3.1. Therefore, looking to the facts and circumstances of the case, in my opinion, the Labour Court has committed an error in entertaining the application. Further Mr. Joshi has drawn my attention to the Government Circular whereby, the duty hours of the watchman are fixed, and contended that the respondent-workman herein was compelled to work for ten hours i.e beyond eight hours. However, in view of the provisions of Rule 17 of the B.C.S.R. a Government servant shall not claim any other benefits except the benefits which are available under the service conditions. In my opinion, the Labour Court has committed error in entertaining application under Section 33-C (2) of the I.D. Act and has not decided the application in accordance with law. Therefore, the order of the Labour Court is required to be quashed and set aside.

4.0. In the result, the order passed by the Labour Court dated 4th April, 2003 in Recovery Application No.376/87 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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